The strength of these industries depends on boosting their business investment. If these industries are strong and are buying the new technologies of the country, then our technology side also begins to strengthen. Of course, increased use of technology by workers improves worker productivity.

You have to get the marketplace working and you have to get investment back into the market to increase productivity. Productivity is the ultimate source of economic prosperity.

While it will tremendously benefit seniors—and these are statistical facts on which we all agree—what we are really talking about is jobs. What the American people are questioning and asking for right now is job creation, and we are playing politics with an awfully important issue that can have the effect of stimulating the economy, bringing investment into the economy, and creating those jobs that the American people are extremely concerned about today. Technology, the application of investment into these fields, ratchets upwards and does exactly what we want it to do, producing higher levels of productivity and driving wages higher for all of our citizens. It is an economic combination that works well.

It is interesting that the economic critics are quiet because they have done their modeling and they have seen the positive, job creating effect of ending the double taxation of dividends. It is now the political critics who step forward saying we cannot do this kind of thing. Of course, if one is a critic of the issue and their political advantage requires that somebody ought to fail who has put this issue forward, then denying this economy the ability to grow is certainly in the forefront of their concern.

The argument is deficits and spending, that government does not create jobs, it just spends a lot of money. Yes, ending the dividend penalty can have an effect, and I talked earlier this morning about the effect of technology and the application of technology once it is well developed in areas where the public sector cannot go.

That ultimately will create jobs when it is applied in the private sector, but certainly the kind of spending we are talking about as it relates to government is not what generates jobs. What will generate jobs and what most of us have come to realize can generate jobs—is an effective economic stimulus package that does not double tax, that does not penalize profit-seeking, and that does allow a reduction in the cost of capital by as much as 10 to 25 percent.

In my State of Idaho, employment decreased by 6,000 workers last year, and we are not a big State. Earlier this year, Micron, one of my larger employers, announced a plan to lay off 1,000 people. Zilog, a California company employing a number of people, closed its doors. The dividend taxation is, in part, something that can change this equation effectively and, I think, responsibly. I hope the Finance Committee can bring a stimulus package to the floor that has the elimination of double taxation as a centerpiece to the total package that we will be voting on here in the next couple of weeks.

I see my colleague, the chairman of the Judiciary Committee, the senior Senator from Utah, is now on the floor. I will yield the floor so he has adequate time to speak. I thank my colleagues for listening.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague for his excellent remarks. My colleague from Idaho has been a formidable force in the Senate for many years and he has done a terrific job, and these particular remarks I agree with and associate myself with.

Mr. CRAIG. I thank my colleague.

THE LOOMING SUPREME COURT BATTLE

Mr. HATCH. Mr. President, I want to take a few moments this morning to share with my colleagues an article that recently appeared in the Washington Times about what may happen if there is a Supreme Court vacancy this year. I hope this article is wrong because it will be a sad day for America if its predictions come true. But I am going to talk about this article because I think its predictions might come true in this bitter, partisan Senate that exists today.

This article, written by James L. Swanson of the Cato Institute, is entitled, Forthcoming Clash for the Court. Let me take a moment to share with my colleagues the dire forecast this article sets forth. It begins:

At the Supreme Court of the United States, October Term 2002 is drawing to a close. The justices hear their last oral arguments on April 30, and in late June they will take to the bench for the last time to announce their final opinions of the term. Court watchers await decisions in several important cases, including free-speech and affirmative-action issues, which may not come down until the last day of the term. But that is not the only reason why court watchers have circled the last week in June on the calendar. That is when oddsmakers are betting on the retirement of at least one member of the court.

For months, pundits have speculated that Chief Justice William H. Rehnquist, Justice Sandra Day O'Connor or Justice John Paul Stevens will step down this year. Why?

Because justices traditionally retire under the political party that appointed them, and this is the last chance for these three Republican appointees to retire during President Bush's first term with the assurance that he can fill a vacancy before the 2004 election.

Because, in the case of the chief justice, he has, in three decades of service, gone from lone dissenter to leader of the court's return to the first principles of limited government and federalism, and will go down as one of the most important chief justices in history.

I agree with that assessment. I agree the author is right on that. Chief Justice Rehnquist has been a remarkable chief justice and the Court has done some remarkable things under his leadership. But the article goes on to say:

Because, in the case of Justice O'Connor, the press spread rumors that she wanted to retire.

Because, in the case of Justice Stevens, he is 83 years old.

Both are excellent people and excellent leaders. Let me go on:

It is impossible to know whether these or any other members of the Supreme Court are planning to retire this year. Many self-styled experts have embarrassed themselves by attempting to predict a justice's vote in a single case, let alone a retirement from the bench. Nor is this to suggest that any of the nine justices should retire. The performance of the oldest justice (John Paul Stevens), to the youngest (Clarence Thomas), of the longest serving (William H. Rehnquist) to the briefest (Stephen Breyer), reveals that all remain able and engaged. Their written opinions confirm that none has suffered an intellectual decline. One may disagree with their views, but not their competence to serve. If a retirement comes, it will occur because the justice wants to step down, not because he or she has to.

It might not happen until the end of June. But it could also happen tomorrow. Justices Potter Stewart, Warren E. Burger and Thurgood Marshall waited until the end of their final terms and made June announcements. But Byron White and Harry Blackmun announced their retirements early, on March 3, 1993, and April 6, 1994, respectively, to give President Clinton ample time to nominate their successors, Ruth Bader Ginsburg and Stephen Breyer, and to win Senate confirmation by, in both cases, the beginning of August.

Although it is impossible to know if or when a vacancy will occur, one thing is easy to predict: how Democrats will respond to Mr. Bush's first nomination of a Supreme Court justice. Senate Democrats, in combination with a cabal of special interest groups, intend to politicize the Supreme Court and oppose any Bush nominee, regardless of who the nominee is. History, both recent and reaching back to the Reagan and first Bush presidencies, offers little encouragement that the Senate will conduct itself professionally and responsibly.

The pattern emerged over time: the Democrats' defeat of Judge Robert H. Bork's nomination to the court in 1987; their near-killing of Judge Clarence Thomas' nomination in 1991; their rage against the Supreme Court for ''handing'' the presidency to the Republicans in the 2000 election; the notorious Washington Post op-ed by Abner Mikva (former Clinton White House counsel and retired U.S. Court of Appeals judge) calling on the Senate to block any Supreme Court nominations by President Bush; their bottling up superbly qualified appellate court nominees for nearly two years on the Democratic-controlled Senate Judiciary Committee; their obsession with Roe vs. Wade and their imposition of ideological litmus tests; their celebration of the American Bar Association seal of approval as the ''gold standard''—until the ABA began giving many of Mr. Bush's nominees the highest possible rating; their filibustering of the nomination of Miguel Estrada to the U.S. Court of Appeals in Washington to prevent an up or down vote even after a majority of senators announced that they will vote to confirm him; their threatened filibuster against Texas Supreme Court Justice Priscilla Owen for a seat on the 5th U.S. Circuit Court of Appeals.

That history, and more, exposes what Democrats will do to fight a Bush Supreme

Court nomination. The attack will be waged on two fronts, one substantive, the other procedural.

The substantive attack will have six parts.

Retirement day blitzkrieg. If the retiring justice is a Republican, and gives the White House advance, confidential notice of his or her intention to retire, as Chief Justice Warren Burger did in 1986, the president will have an opportunity to announce a retirement and a nomination on the same day. Within one hour of that nomination, a leading Democratic senator, probably Tom Daschle, Edward Kennedy, Patrick Leahy or Charles Schumer, will attack the nominee's character, integrity or competence. (Recall Mr. Kennedy's outburst within 45 minutes of President Reagan's nomination of Judge Bork: ''Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue policemen could break down citizen's doors in midnight raids, school children could not be taught about evolution, writers and artists could be censured at the whim of government.'') Sundry left wing ''public interest'' (actually, special interest) groups will join the chorus. The purpose of the first day blitzkrieg is to set the president and the nominee reeling on their heels and destroy the momentum of the nomination. The blitzkrieg aims to spin that night's TV coverage and the next morning's newspaper stories.

The paper blizzard. Within hours of the nomination, senators and special interest groups will inundate the press with letters, reports, memos and even small books that purport to expose the unfitness of the nominee. In many cases, those scripts have already been written. For more than two years, Democrats have been doing ''opposition research,'' as though preparing for a political campaign, to uncover damaging information on the 10 to 15 people rumored to be on the president's short list for the court. The purpose of the paper blizzard is to turn public opinion against the nominee long before the Senate Judiciary Committee even convenes a hearing on the nomination.

The indictment. The paper blizzard will include some or all of the following accusations: The nominee is not ''sensitive'' to the rights of women, children, black Americans and other racial minorities, the disabled, workers, unions, farmers, native Americans and others. The nominee is ''out of the mainstream'' of the American legal tradition; is too ''right wing''; is even ''radical.'' (Democrats perfected their use of those smear tactics against Judge Bork, stooping so low as to suggest he might not believe in God. Apparently a godless conservative is even more dangerous than a god-fearing one.) With much hand-wringing, Democrats will cry crocodile tears, sighing ''if only the president had nominated a moderate conservative, we would be delighted to confirm him or her.''

We have seen that lately in just regular nominations. You can imagine what is going to happen with the Supreme Court nomination.

If the nominee does not have an extensive body of scholarly writings, Democrats will tar him as a ''stealth'' candidate, who possesses hidden and alarming views. If, on the other hand, the nominee has written extensively, those writings will be denounced as ''out of the mainstream.''

Remember that phrase. We have seen a lot of it around here in recent times on current nominees, who have had unanimous well qualified ratings from the gold standard of the Democrats, the American Bar Association.

Mr. Swanson goes on to say:

If the nominee believes in a color-blind society and equal treatment under the laws, and questions the constitutionality of race-conscious policies called affirmative action by some, then of course the nominee is a ''racist'' who will want to ''turn back the clock'' on civil rights, overturn Brown vs. Board of Education, repeal the 13th, 14th and 15th Amendments, and reintroduce slavery.

Mr. Swanson is very colorful in some of his remarks, but we have actually seen this type of treatment of Republican nominees.

Mr. Swanson goes on to say:

Beyond attacking the nominee personally, the paper blizzard will suggest that he or she represents a so-called transformative appointment who will upset the alleged delicate balance of the court. Some Democrats will seek cover by claiming that they have nothing against the nominee, he or she is just the wrong person at the wrong time for the best interests of the court and the country.

We have actually seen that in the months since January, and on other occasions, with the same arguments being used against people with unanimous well qualified recommendations from the American Bar Association.

Mr. Swanson goes on to say:

Rancorous hearings. Mr. Bush's first nominee to the court should not expect a cordial reception from Democrats on the Judiciary Committee. They will attempt to grill the nominee for three to six days. They will ask hundreds of questions. Many hostile witnesses will be called. Special interest groups will haunt the hearing room and loiter in the halls, murmuring against the nominee and handing out attack literature.

The partisan committee vote. For the Democrats, the hearings are mainly for show and to posture before the cameras for their constituencies and the left-wing special interest groups. They will have already decided their vote before the hearing begins or the nominee speaks one word. Of course that vote is ''no.'' Because Republicans are a majority on the committee, the nomination will be reported to the Senate favorably by a party-line vote.

The Senate vote. Once the Judiciary Committee reports the nomination to the full Senate, Democrats opposing the nomination will continue to fight it on the floor by insisting on a lengthy debate. Then they will try to persuade their colleagues to vote against the nominee. Ultimately they will lose. The president's nominee will be confirmed because the Republican majority, plus a number of responsible Democrats, will vote to confirm him. If there is a vote, that is.

Along with their substantive attack on the nominee, Democrats will mount a procedural attack. That plan has two elements.

Delay the Judiciary Committee hearing. Upon making a nomination, the president will ask Judiciary Committee Chairman Orrin Hatch to schedule hearings by early July, with the goal of having a Senate floor vote by late July or early August. Democrats on the committee will vigorously oppose that goal and attempt to delay the hearing until September. They will bleat that there must be no ''rush to judgment,'' and claim that they require months to ''study'' the nominee. Their ability to stall Judge Bork's hearings until September contributed to the nomination's defeat. Democrats and the special interest groups had all summer to mobilize their onslaught against Judge Bork. The White House failed to anticipate the viciousness of the assault and was taken off guard. Because the Republicans now control the committee, the Democrats will find it harder to stall the hearings.

The filibuster trump card. When all else fails to cow the president's nominee into withdrawing, when the Democrats have been unable to stall the Judiciary Committee hearing, when they can't stop the committee from reporting the nomination favorably to the full Senate, after they fail to turn mainstream America against the nominee, when they count heads and discover that a majority of senators, including many Democrats, intend to vote to confirm the president's nominee, look for the leaders of the opposition to play their favorite, anti-democratic, Democratic trump card—the filibuster. Democrats challenged the president on Miguel Estrada, and they believe they have found the president wanting. Although Mr. Bush has called Mr. Estrada one of his most important appellate nominees, the White House has, for the past two years, been unable to confirm him. The Democrats' successful filibuster against Miguel Estrada, the first ever against a nominee to a U.S. Court of Appeals, has emboldened them to challenge Mr. Bush when he makes his first nomination to the High Court. The Democrats have paid no price for their Estrada filibuster. Look for them to test the president again.

Yes, that is the worst-case scenario, and it may not unfold. In any event, if there is a vacancy on the court, the nominee must be treated civilly, fairly and allowed an up-or-down vote by the full Senate, as the Constitution contemplates. The president had better be prepared for a fight. His opponents are certainly ready. If the president prevents the politicization of nominations to the lower Federal courts, and to the U.S. Supreme Court, he will win the most important domestic battle of his first term. If he loses that battle, he may not get a second chance.

Those are one observer's predictions about the fight that will ensue if there is a vacancy on the Supreme Court this year. As I said at the outset, I certainly hope that the predictions in this article do not come true, because it will be a sad day for the Senate and for the country if they do. I have to admit that many of the tactics described in this article sound alarmingly familiar—we have seen them practiced with great skill on President Bush's Circuit Court of Appeals nominees.

We have seen most of those types of techniques used in various debates. I am hopeful that this type of bitter partisanship will not continue. I continue to try to be optimistic about the prospects for a Supreme Court vacancy, but it gets harder and harder every day, and about fair treatment for whoever is appointed by this President. I have to say I have a great deal of concern about how the President's nominee or nominees to the Supreme Court will be treated. I hope my colleagues will think about the impact of these tactics as described in this article and the consequences of such a destructive campaign on both the Senate and the Nation.

Mr. Swanson has done us a favor by putting what have been tactics used in the past into an article—yes, an alarmist article, but unfortunately every one of those tactics he has described has been utilized in the past by friends on the other side.

We are right now in the middle of filibusters against two highly qualified, exceptional people, and the arguments used against them are almost unreal. The only argument I keep hearing about Miguel Estrada is he just hasn't answered all the questions. We have had very few circuit court nominees who have even come close to answering the number of questions that have been asked of Mr. Estrada. We hear arguments against Priscilla Owen, about the only thing left that has not been totally obliterated by the facts: that she joined in dissent—in a few of the better than 800 cases—of a young girl who asked for a judicial bypass so her parents would not have to be notified about her upcoming abortion.

Polls indicate that more than 70 percent of the American people support parental notification. It has nothing really to do with Roe v. Wade. It has to do with whether parents have a right to assist or consult with their young daughter who may be going through the most momentous medical procedure in her lifetime. But the finder of fact in these few cases found that these young women—these young girls—should consult with their parents. That is being held against Priscilla Owen as though she is against Roe v. Wade, when she clearly and unequivocally said she will support the decision in Roe v. Wade as a circuit court of appeals judge. You couldn't ask anything more of her, but they are asking more.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LUGAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NATO EXPANSION TREATY

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 6, which the clerk will report.

The legislative clerk read as follows:

Resolution of Ratification to Accompany Treaty Document No. 108–4, Protocols to the North Atlantic Treaty of 1949 on Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia.

The PRESIDING OFFICER. Under the previous order, there are 4 hours of debate on the treaty.

The Senator from Indiana.

Mr. LUGAR. Mr. President, we now commence a very important debate on the NATO treaty.

On behalf of the Committee on Foreign Relations, I am pleased to bring the protocols of accession to the North Atlantic Treaty of 1949 to the floor for the Senate's consideration and ratification. The protocols extending membership to Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia were signed on March 26, 2003, and were transmitted by President Bush to the Senate on April 10, 2003. The accession of these countries to the NATO Alliance is a tremendous accomplishment. It deserves the full support of the Senate and the governments of the other 18 NATO members.

The Foreign Relations Committee has held 10 hearings on NATO since 1999. Five of these hearings were held during the last 2 months, as we prepared for this debate on the Senate floor. The Senate Foreign Relations Committee gave its unanimous approval to the resolution of ratification.

I especially thank Senator JOSEPH BIDEN for his assistance in moving NATO expansion forward and for his insightful participation in the wider debate on NATO policy. The resolution of ratification before us today reflects our mutual efforts to construct a bipartisan resolution that could be broadly supported by the Senate.

During the course of the committee's consideration of the Protocols of Accession for these seven nations to join NATO, we received testimony from Secretary of State Colin Powell, Under Secretary of State Marc Grossman, Under Secretary of Defense Doug Feith, and United States Ambassador to NATO Nick Burns. Each expressed strong support for NATO expansion. In addition to efforts undertaken in the Foreign Relations Committee, Senators LEVIN and WARNER and the Committee on Armed Services conducted two hearings examining the military implications of the treaty and shared an analysis of their findings with us. This letter has been made a part of the RECORD and our committee report.

When NATO was founded in 1949, its purpose was to defend Western democracies against the Soviet Union. But the demise of the Soviet Union diminished the significance of NATO's mission. We began to debate where NATO should go and what NATO should do. In early 1993, I delivered a speech calling for NATO not only to enlarge, but also to prepare to go ''out of area.'' At that time, many people were skeptical about enlarging NATO's size and mission. Those of us who believed in NATO enlargement prevailed in that debate. And I believe that events have proven us right.

As we consider this new enlargement, it is clear that the last round has been highly beneficial. Hungary, Poland, and the Czech Republic are among the most dynamic countries in Europe. They are deeply interested in alliance matters, and they have sought to maximize their contribution to collective security. The prospect of NATO membership gave these countries the incentive to accelerate reforms, to settle disputes, and cooperate with their neighbors. Their success, in turn, has been a strong incentive for democratization and peace among Europe's other aspiring countries.

Many observers will point to the split over Iraq as a sign that NATO is failing or irrelevant. I disagree. Any alliance requires constant maintenance and adjustment, and NATO is no exception. The United States has more at stake and more in common with Europe than with any other part of the world. These common interests and shared values will sustain the alliance if governments realize the incredible resource that NATO represents. As the leader of NATO, we have no intention of shirking our commitment to Europe.

But as we attempt to mend the alliance's political divisions over Iraq, we must go one step further and ask, if NATO had been united on Iraq, could it have provided an effective command structure for the military operation that is underway now? And would allies, beyond those currently engaged in Iraq, have been willing and able to field forces that would have been significant to the outcome of the war? In other words, achieving political unity within the alliance, while important to international opinion, does not guarantee that NATO will be meaningful as a fighting alliance in the war on terror.

In the coming years, NATO will have a decide if it wants to participate in the security challenge of our time. If we do not prevent major terrorist attacks involving weapons of mass destruction, the alliance will have failed in the most fundamental sense of defending our nations and our way of life.

This reality demands that as we depend NATO, we also retool NATO, so that it can be a mechanism of burden sharing and mutual security in the war on terrorism. America is at war, and we feel more vulnerable than at any time since the end of the cold war and perhaps since World War II. We need allies to confront this threat effectively, and those alliances cannot be circumscribed by geographic boundaries.

In our committee hearings on NATO, we have heard encouraging testimony that our allies are taking promised steps to strengthen their capabilities in such areas as heavy airlift and sealift and precision-guided munitions. We also have heard that the seven candidates for membership are developing niche military capabilities that would be useful in meeting NATO's new military demands. But clearly, much work is left to be done to transform NATO into a bulwark against terrorism. An early test will be NATO's contribution to peacekeeping and humanitarian duties in the aftermath of combat in Iraq. A strong commitment by NATO nations to this role would be an important step in healing the alliance divisions and reaffirming its relevance for the long run.

The Resolution of Ratification we are considering today includes nine declarations and three conditions. I will review each of these provisions for the benefit of the Senate: